IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2005

CORAM:

THE HONOURABLE MR.JUSTICE K.P.SIVASUBRAMANIAM

W.P.No.39824 of 2002 and
Contempt Petition No.774 of 2002

W.P.No.39824 of 2002:

S.Chattanatha Karayalar
College of Arts and Sciences
Karayalar Nagar, Tenkasi
Tirunelveli District-627 804
rep. by its Secretary
N.Rajamani. .. Petitioner

versus

The Controller of Examinations
Manonmaniam Sundaranar University
Abishekapatty
Tirunelveli-627 012. .. Respondent

Cont.Petn.No.774 of 2002:

S.Chattanatha Karayalar
College of Arts and Sciences
Karayalar Nagar, Tenkasi
Tirunelveli District-627 804
rep. by its Secretary
N.Rajamani. .. Petitioner

versus

1. Dr.P.Gomathinayagam
   The Controller of Examinations
   Manonmaniam Sundaranar University
   Abishekapatty
   Tirunelveli-627 012.

2. Dr.K.Chockalingam
   The Vice Chancellor
   Manonmaniam Sundaranar University
   Abishekapatty
   Tirunelveli-627 012.

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3. Dr.P.Nagarajan
   The Registrar
   Manonmaniam Sundaranar University
   Abishekapatty
   Tirunelveli-627 012. .. Respondents

3rd respondent impleaded as per order of Court dated 31.12.2003 made in Sub Appln.No.575 of 2003

PRAYER: W.P.No.39824 of 2002 is filed under Article 226 of the Constitution of India for the issue of a writ of Certiorari to call for the records relating to the proceeding made in No.MSU/EXAM./COE/2002 dated 18.10.2002 on the file of the respondent and quash the same in so far as conditions 2, 3 and 4 are concerned.

Contempt Petition No.774 of 2002 is filed under Sections 10 and 12 of the Contempt of Courts Act to issue notice to the respondents for their appearance before this Court and punish the respondents for contempt of Court for disobeying the orders passed in W.P.M.P.No.59257 of 2002 in W.P.No.39824 of 2002 dated 1.11.2002.

For petitioner in W.P. No.39824 of 2002 and Cont.Petn.No.774 of 2002 : Mr.S.Doraisamy

For respondent in W.P.No. 39824 of 2002 and respondents in Cont. Petn.No.774 of 2002 : Mr.N.G.R.Prasad for M/s.Row and Reddy

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ORDER

In this writ petition, a College at Tenkasi has sought for a writ of Certiorari to quash the proceedings of the University dated 18.10.2002. The proceedings have been issued by the Controller of examinations and the order relates to certain directions to the petitioner College in the matter of public examinations to be conducted by the College during November, 2002.

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2. In as much as the impugned directions relate only to the conduct of the examinations in 2002, the prayer for the issuance of a writ does not survive for consideration as on date and hence, the writ petition is liable to be dismissed as infructuous. However, it is the contempt petition which had been filed subsequently, which requires to be dealt with and disposed of on merits. In the said circumstances, I would refer to the pleadings and contentions in the main writ petition only to the extent that may be necessary for the disposal of the contempt petition.

3. In the order impugned in the writ petition, the University, on its perception of certain misconduct by the College in the matter of appointment of teachers and dealing with some of the students, had issued certain directions of placing certain restrictions on the College. After referring to some of the past events and alleged commissions and omissions by the College, the respondent had issued the following directions under the impugned order.

(i) The examinations will be conducted in the College itself and there was no change in the centre.

(ii) The Chief Superintendent, invigilators and other examination staff will be appointed from among the faculty members of the University and the staff of other neighbouring colleges.

(iii) The campus shall be handed over to the designated officers of the University from 5.11.2002 till the end of the examination.

(iv) There shall be no interference by the college or the staff of the college, and in any case of disturbance, the examinations would be suspended and suitable action will be taken by the University.

4. In the writ petition, the petitioner had questioned Condition Nos.(ii), (iii) and (iv). In support of the writ petition, the petitioner had contended that the college was a self-financing institution which was started in the year 1994. Before the present Management took over, the Management had followed an adhoc salary system for the staff and there were several anomalies and in order to discard the anomalies, after the present Management took over, a time scale of pay with increment was introduced from the Academic Year 2001-2002. However, some of the teachers claiming to be members of M.U.T.A., refused to receive the salary. The payments by cheques were returned as refused. It is the further complaint of the college that the said teachers had instigated some of the students to indulge in indiscipline and violence which resulted in causing damage to the property of the college. A police complaint had been lodged and was pending against five students. After enquiry, they were dismissed from the college. However, by order dated 11.3.2002 of the Dean of the University, the Principal of

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the College was directed to take back the students. This was questioned by the college in W.P.No.11936 of 2002. P.Sathasivam,J., by order dated 22.4.2002, directed the students to file affidavits of undertaking conveying their regret for the incident which had taken place on 26.12.2001 and that they will not resort to any unlawful acts in future. The learned Judge was of the view that one more opportunity may be given to them to pursue their studies. The college was directed to implement the proceedings of the University and to take back all the five students.

5. In the said background, examinations of the Academic Year 2002-2003 were scheduled to be conducted on 24.4.2002. The practical examinations were held from 15.3.2002 to 6.4.2002. While so, on 22.3.2002, the respondent had sent a communication changing the university centre from the petitioner college to Manjammal Government Higher Secondary School, Tenkasi. The petitioner had filed a writ petition as against the said order and as a result of the dismissal of the petition for stay, W.A.No.1438 of 2002 was filed. However, when the appeal came up for hearing on 14.5.2002, as all the examinations were over, the appeal was disposed of.

6. According to the College, in the meantime, in April 2002, some teachers who were not qualified for appointment as lecturers, were terminated from service by following proper procedure. However, the said teachers again instigated the students to boycott the classes. Some of the students joined the boycott and they also prevented other students from attending the classes. The boycotting students also indulged in violence and caused damage to the properties.

7. While students continued to remain absent, some teachers as well as students were creating a scene as if they were taking classes on the road side near the college. The Registrar of the University compelled the petitioner College to take back the teachers who have been removed from the college, even though they were not qualified. Directions were also issued to the petitioner college not to take action against the students. The petitioner also contends that the examinations were not conducted in a proper manner at Manjammal Government Higher Secondary School.

8. The petitioner further contends that for the semester examination scheduled to be held in November, 2002, the University had issued a circular on 14.8.2002 informing the dates for its examinations. The commencement of the examination was to be on 30.10.2002. While the petitioner had complied with all the requirements, on 12.9.2002, the Registrar wrote to the College directing the principal to permit the students who have been sent out of the College, to write the examinations in spite of the

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fact that they did not have the required attendance nor had they paid the college fees. They were involved in indiscipline. There was also some correspondence relating to the qualifications of Professor V.Gopalsamy, who was appointed as Principal. According to the petitioner, as he was not a member of M.U.T.A., the University did not grant its approval in a motivated manner. On 19.10.2002, the respondent had issued orders which are impugned in the writ petition. According to the petitioner, there was no justification for such an order when the College was running smoothly after the removal of the unqualified teachers, who cannot be taken back. Hence, the writ petition.

9. Along with the said writ petition, the petitioner had sought for an order of interim stay in W.P.M.P.No.59257 of 2002. Notice to the respondents was ordered on 29.10.2002 and subsequently, the writ petition was admitted and interim stay was granted on 1.11.2002.

10. On 7.11.2002, the petitioner came forward with Contempt Petition No.774 of 2002, alleging that the respondents have deliberately violated the interim order by issuing fresh directions to the petitioner college, thus going against the interim order dated 1.11.2002. On 5.11.2002, they had received a telegram from the respondent informing the petitioner that in terms of the resolution by the Syndicate in its meeting held on 2.11.2002, the examination centre had been changed from the petitioner college to Parasakthi College at Courtallam. The contempt petition was heard in detail and witnesses were also examined by both sides.

11. There appears to have been a series of writ petitions and interim directions as well as writ appeals both before and after this writ petition (W.P.No.39824 of 2002) between the College and the University. What are the controversies or the merits of those controversies between the two are not issues for my consideration and I had made it clear to both sides that I would be dealing only with the contempt petition and not the other writ petitions which appear to be an endless battle between the two. I would indicate the issues over which both sides are litigating only to the extent as would be required to appreciate the mutual contentions in this contempt petition.

12. According to Mr.S.Doraisamy, learned counsel for the petitioner, the entire friction between the University and the College was only at the behest of a group of teachers whose services had to be terminated as they were not qualified to hold the post. They were able to put pressure on the University to pressurise the Management to reinstate them in service. Those teachers were prepared to go to any length and even instigate the students to indulge in indiscipline resulting in damage to properties belonging to the Institution and when disciplinary action was sought to be taken against the students, then also the

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University would interfere with the administration and compel the college to take them back, unmindful of the adverse consequences. The circumstances leading to the filing of the contempt application also would indicate the determined mala fide action on the part of the University and show that they would not even bother to violate orders of the Court to please a group of indisciplined staff and students and would not allow the College to maintain discipline. It is true that the erstwhile Management was responsible for making appointments of unqualified persons and not implementing proper scale of pay. After the present Management had taken over the administration, they were doing everything to set right the mistakes. The University being the supreme body to regulate the affairs of the constituent colleges, instead of appreciating the steps which were taken by the college, had taken up the cause of the teachers who had strangely gained appointment by improper means. By pretending to take action against the college for not implementing the U.G.C. scales of pay, the University was actually acting as a puppet in the hands of unqualified lecturers who were rightly dismissed from service.

13. Per contra, Mr.N.G.R.Prasad, appearing for the University, contends that the college was interested only in making money out of education without even the basic infrastructure. Teachers were not paid their salary properly and the college was adopting hire and fire policy. All these issues resulted in indiscipline and when the University stepped in to enforce discipline and issued certain orders which the University was entitled to, the college would not obey its directions and would indulge in non-compliance of the directions and file a series of writ petitions. In none of the proceedings the college succeeded. The University chose to take the impugned actions only after giving due opportunity to the College and after a properly conducted enquiry. The University has the powers to issue appropriate directions in the interest of the teaching staff and the student community to maintain proper standards and also, if necessary, to change the venue of the examination, when the University was convinced that to conduct the examination in the College itself will not be conducive to the proper conduct of the examinations.

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14. Now, coming to the circumstances under which the contempt petition had been filed, though the writ petition was moved on 29.10.2002 itself as it related to conduct of examination, direction was given to issue notice to the counsel for the University. After hearing both the counsel, on 1.11.2002, the writ petition was admitted and interim stay was granted on 1.11.2002. The following is the order issued while admitting the writ petition:

> " The grievance of the petitioner-College is that it is subjected to repeated actions by the University which are not warranted. Notice

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was given to the respondent and the counsel representing the respondent also appears.

According to the counsel for the respondent, action initiated by the respondent was only in the context of problems between the college on the one hand, and teachers and students on the other hand.

To my specific question whether University has instituted a specific enquiry or not, the counsel is not able to produce any material to show the University having conducted any independent enquiry on its own apart from the complaints said to have been received from the students and teachers.

Admit. Issue Rule Nisi. Call for records. Eight weeks. "

15. In reply to the allegations of the petitioner that the said interim order has been violated, the Controller of Examinations had filed a counter affidavit on 21.1.2003. While denying the allegations relating to the alleged disobedience of the orders of this Court, he would state that the atmosphere in the petitioner's college was not conducive to hold academic examination because of the fact that the Management was adopting a policy of hire and fire of teachers and there was lot of indiscipline.

16. After tracing the various events which led to the passing of the order impugned in the writ petition, the respondent had stated that on 18.10.2002, orders were issued to the College directing the College to hand over the premises to the University to enable them to conduct the examination under the full control of the University.

17. In the agenda of the meeting of the Syndicate held on 2.11.2002, there were two items, namely, Item Nos.55 and 6 relating to the petitioner-college. When a detailed report of the Four Member Syndicate Sub-Committee was discussed under Item No.55, the Members of the Syndicate were deeply concerned about many violations by the petitioner-College. The Syndicate also took note of the fact that the Principal Mr.V.Gopalsamy was not properly qualified to be appointed as the Principal. There were also representations from the students for the change of venue of the examination centre as they apprehended danger of being prevented from writing the examination. The entire issue was discussed by the Syndicate on 2.11.2002 and the Syndicate bona fide believed that in the best interest of the students, the centre should be changed outside the college. It was this decision of the Syndicate which was communicated to the petitioner. The said communication is the subject matter of the contempt petition. The respondent would further state that the University and himself were duty bound to implement the decision

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of the Syndicate and he had merely communicated the decision of the Syndicate. Neither the respondents nor the Syndicate had any intention to disobey the orders of the Court. The resolution was taken bona fide in the interest of the students. The respondents have strictly followed the directions of the Court dated 8.11.2002. The allegation that the Vice Chancellor had stated in the Syndicate meeting that he would look after the Court order was false and the said telegram has been made only with a mala fide intention to malign the second respondent. The proceedings of the Syndicate were held in camera and the petitioner was not a member of the Syndicate and the statement thus attributed to the second respondent was false, motivated and malicious.

18. In the counter affidavit filed by the Vice Chancellor, Mr.K.Chockalingam, he would state that whatever had been done by the University had been done bona fide and if any mistake had crept in, he would tender his unconditional apologies. He had read the counter affidavit filed by the Controller and what had been stated therein were substantially correct.

19. Though a reply has been filed by the petitioner, the statements made in the reply affidavit mainly pertain to the allegations of the University regarding the manner in which the college was conducted and does not have much reference to the issues pertaining to the contempt application.

20. A rejoinder affidavit has been filed by the respondent. With reference to the proceedings of the Syndicate, the respondent has stated that though in the counter affidavit it was pointed out that the deponent was not a member of the Syndicate and that the meeting had been conducted in closed doors and that no Syndicate Member was aware of the interim stay granted by this Court on 1.11.2002, the petitioner had chosen to say that the Syndicate was aware of the interim order. The petitioner had no first-hand information of the proceedings of the Syndicate. He has not substantiated his statement in the affidavit that one of the Syndicate Members had brought to the knowledge of the Syndicate about the order of stay. No name of the Syndicate Member has been furnished. It is not the case of the petitioner that he or his counsel communicated the order of the Court to anyone in the University. The Controller of Examinations came to know of the order only from the communication of their counsel dated 2.11.2002 addressed to the Registrar with copy to himself. The said communication was received only on 5.11.2002, informing that the matter was taken up by the Court only at the fag end of the day on 1.11.2002 and that the interim stay has been ordered earlier on 29.10.2002 and that unless it is vacated, the University may not be in a position to conduct the examination as contemplated. The Syndicate had no knowledge of the interim order when it passed the resolution on 2.11.2002. The deponent would once again tender his unconditional apologies on behalf of himself and the Vice Chancellor for whatever happened on

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2.11.2002 and that both himself and the Vice Chancellor are merely officers of the University and they were bound to implement the decisions of the Syndicate.

21. Oral evidence was tendered by Mr.Gopalasamy, Principal of the College, on behalf of the College as P.W.1 and three witnesses were examined on behalf of the respondents/University – Mr..Gomathinayagam, Controller of Examinations (R.W.1), Dr.K.Chockalingam, Vice Chancellor (R.W.2) and Mr.P.Nagarajan, Registrar (R.W.3).

22. Mr.S.Doraisamy, learned counsel for the petitioner, contended that the evidence would disclose that the University was picking on the petitioner institution only at the instigation of M.U.T.A., which was backing the teachers whose services were terminated, due to the simple fact that they were not qualified to be appointed. The University was strangely supporting the cause of the unqualified teachers in a very curious manner and the students who had behaved in violent and indisciplined manner. Whatever mistakes which might have been committed by the erstwhile Management, the present Management was rectifying the said defects, and the University, instead of being indulgent towards the Management to help and encourage the College to achieve proper appointments and enforcement of discipline among the staff and students, instead, had fallen a prey to the pressures from the teachers who were unqualified and indisciplined students. The evidence of the Vice Chancellor was clear and the fact that he was acting under pressure was admitted. While the University was supporting unqualified teachers, they were finding fault with the appointment of V.Gopalasamy by the petitioner as the Principal of the College, who, in the perception of the University, was unqualified, while really speaking, he was qualified. As regards the salary paid to the teachers, it is true that some of the teachers were not paid at the U.G.C. scale and this was only due to the fact that the institution was at the infancy stage and the College was making all efforts to bring the teachers under the U.G.C. Scale, and in the said direction, better scale with increments was being implemented. This is the manner in which most of the private institutions are functioning at their infancy stage and it was curious that the University was showing its dynamism only as against the petitioner, thereby betraying a partisan attitude. Even the Supreme Court had pointed out that at the initial stages a private institution requires an indulgent and practical approach. On this issue, when the witnesses of the University were being questioned, they pretended ignorance, even though specific reference was made to such other institutions against which no action had been taken. There were also other institutions working with in-charge Principal. But the University sought to take action only against the petitioner College. To a specific question as to whether there were not many other similar institutions and why no action was taken

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against them, R.W.1 had given an evasive reply. Likewise, to the specific allegation that MANO Colleges (run by the University) and some other private institutions under the respondent University were not implementing U.G.C. Scale of pay, the witnesses of the respondent were giving evasive replies. The entire action of the University against the petitioner College was totally partisan and motivated.

23. The facts relating to disobedience of the order are also only an extension of the attitude of the University to penalise the petitioner institution at any cost even if it requires disobedience of the orders of the Court. There was clear evidence to show that the pendency of the writ petition was within the knowledge of the three witnesses even before the meeting of the Syndicate. They have also been strictly told by the counsel for the University to keep in touch with the counsel. But in their evidence, they want to make it appear as though they had no information regarding the interim order. Learned counsel took me through the documentary and oral evidence in support of his contention that the respondents were fully aware of the interim order, but yet, would proceed with the meeting of the Syndicate and pass a resolution with an intention to violate the order. In order to avoid repetition, I am not referring to such references by the learned counsel at this stage. Learned counsel further contended that though the respondents have admitted that they became aware of the order on 5.11.2002, nothing was done to implement the order immediately after that date and before 8.11.2002, on which date, the interim order was modified. If the statement of the respondents that they were anxious to obey the orders of this Court and that they have not violated any order was true, the fact remains that nothing was done by the respondents to restore the position as it existed on the date of the interim order and the interim order was never ever complied with by the respondents.

24. Mr.N.G.R.Prasad, learned counsel representing the University, contended that the University had been discharging its functions as the Apex Body of keeping the educational institutions under proper control in the interest of the teaching staff and the student community and for maintaining proper standards of education. The University had no motives nor mala fides in dealing with the petitioner College, whose only motive appears to commercialise and make money through education. The College was being run by a business magnate who believes only in making profit. The University, in the discharge of their statutory functions, had to intervene when the College was adopting hire and fire policy and would not pay to the staff the proper scale of pay and on the other hand, would create situations of student unrest. The student unrest was due to the lack of even basic facilities and infrastructure and when questioned, the College had chosen to adopt a penalising attitude against the teachers and students, which, in turn, resulted in

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indiscipline. The University had the responsibility to enforce discipline. The atmosphere was so volatile. Peace Committee Meetings had to be held and directions were issued only in terms of the decisions arrived at in the Peace Committee Meetings. The University was not at all under any pressure from any group of teachers. Whatever directions which were issued by the University were only after proper conduct of enquiry by a Committee appointed for the said purpose and after being convinced about the commissions and omissions by the College. In none of the writ petitions filed by the College, the petitioner was successful, and in fact, this Court had come down heavily on the petitioner and it was found by the learned single Judge that the petitioner had no regard for law. The said view of the learned single Judge was also confirmed by the Division Bench. Those orders will demonstrate that all was not well with the petitioner institution. A Sub Committee had gone into all the complaints and a perusal of the Sub-Committee's report will disclose that the petitioner had not fulfilled many basic requirements.

25. As regards the contempt petition, order dated 1.11.2002 reached the respondents only on 5.11.2002, whereas, the impugned resolution came to be passed on 2.11.2002 itself. The respondents and the Syndicate did not know about the interim order when the resolution was passed. The subsequent directions on 8th were properly complied with. The petitioner was indulging in arm-twisting tactics by filing contempt petition. The attitude of the petitioner in having stated that in the meeting of the Syndicate, one member had brought to the notice of the Syndicate about the interim order and the reported statement of the Vice Chancellor that he would look after the order of the Court, were false and motivated. The failure on the part of the petitioner to substantiate the said allegation was a serious matter. The contempt petition has been filed only to eliminate legitimate action being taken against the College by the University. It is true that the respondent had no knowledge of the interim order before the 5th and as between 5th and 8th, nothing was done by the University contrary to the interim order.

26. With reference to MANO colleges run by the University, learned counsel contended that those were institutions run by the University in Higher Secondary Schools. The University had located places in the Higher Secondary Schools for running the classes by the University as Extension Centres and those centres are run only by the University and not by the schools. Reference was made to the order of K.Govindarajan,J., in W.P.No.14821 of 2000 dated 20.1.2002, whereunder, the status of of those centres were called in question and the contention of the petitioner in that writ petition that the University was running colleges was rejected.

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27. In support of his contention that there should be a proper service of notice of the interim order and that it is the pre-requisite condition for initiating contempt proceedings, learned counsel relies on the following judgments:

(i) THE ALIGARH MUNICIPAL BOARD AND OTHERS Vs. EKKA TONGA MAZDOOR UNION AND OTHERS (1970 (3) SCC 98); and

(ii) DEBEN ADHICARY Vs. STATE (AIR 1972 Calcutta 84).

28. Reference is made to the following judgment in support of the contention that the mere pendency of a suit or any proceeding will not be sufficient and in order to invoke the provisions of the Contempt of Courts Act, it was necessary that there should be an interim order, reference is made to the judgment of the Supreme Court in K.T.CHANDY Vs. M.R.ZADE (AIR 1974 SC 642).

29. In support of his contention that in a criminal contempt, the statement alleged to have been made by the contemner or any allegations made against the contemner must be proved beyond reasonable doubt, reference is made to the judgment in M.R.PARASHAR Vs. FAROOQ ABDULLAH (AIR 1984 SC 615). Learned counsel contends that the standard of proof in a criminal contempt must be as that of a criminal proceeding and should be established beyond reasonable doubt, and in this regard, reference is made to the judgment in MRITYUNJOY DAS Vs. SAYED HASIBUR RAHAMAN ((2001) 3 SCC 739). To the same effect is the judgment in ANIL RATAN SARKAR Vs. HIRAK GHOSH (AIR 2002 SC 1405) and reliance is placed on the observation that in order to establish allegations of contempt, the element of intention was an indispensable requirement to bring home the charge within the meaning of the Act and if two interpretations were possible, the act cannot be described to be a contempt of Court. If there was a doubt regarding the wilful nature of the contempt, there will be no contempt.

30. Mr.S.Doraisamy, learned counsel for the petitioner, in reply, contended that there was absolutely no response to the specific contention of the petitioner that the University was adopting double standards in dealing with allegations of failure of other institutions not paying at the U.G.C. scale. As regards MANO Colleges, the dispute was not as regards the right of the University to conduct such centres. The question was whether the University was paying salary at proper U.G.C. scales to their own teachers or not. As regards the interim order and the allegations of disobedience, when the Vice Chancellor himself had admitted that he had acted under pressure, no further argument was possible in defence. The conduct of the respondent University was a challenge to the authority of the Courts and the rule of law. Reference was made to the judgment of the Supreme Court in ADVOCATE GENERAL, BIHAR Vs. M.P. KHAIR INDUSTRIES (AIR 1980 SC 946). Reference is made to the observation that proceedings under the Contempt of Courts Act is not in order to

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protect the dignity of the Court against insult or injury but in order to protect and to vindicate the right of the public that the administration of justice shall not be prevented, prejudiced, obstructed or interfered with.

31. Mr.Doraisamy also contended that it was unfortunate that the respondent should dare to contend that even though their counsel had directed them to keep in touch with them and in fact instructions had been sent to the counsel by them even before the interim order was passed, yet they were not informed about the interim order. Such a state of affairs cannot be approved and the counsel had a duty to tell the Court as to what had transpired between himself and the respondent. The counsel should fairly tell the Court as to what had happened instead of asking for proof beyond reasonable doubt.

32. I have considered the submissions of both sides.

33. In the background of pleadings and evidence as above, the facts relating to the issuance of the interim order and the conduct of the respondents, have to be analysed in the light of the evidence adduced before the Court. First, we have to see whether there is a violation of the order and secondly, if there was a violation of the order, whether it was deliberately violated by the respondent with knowledge of the order and whether it was an intentional violation.

34. Though I had made it clear to both the parties that they should confine their evidence only to the facts relating to the charges of contempt alone, yet, both parties, in the respective chief examination of their witnesses and cross-examination, went on presenting long winding statements on the merits of the complaints and counter complaints on the pretext that the bona fides of each party was at stakes and it was necessary to extract from the witnesses, the background of all facts, which ultimately led to the contempt action. Both sides indulged in a spree of statements to their hearts' content, most of which are not relevant for deciding the issue of contempt. But I propose to restrict my discussion only to the evidence relevant to consider the issue of contempt alone and it is not at all necessary to go into the issues other than those facts relevant to decide whether there is wilful disobedience of the interim order, which has to be ventured in the midst of voluminous documents, and long oral and documentary evidence. Only a small portion of the entire evidence is material and relevant for the issue of contempt and therefore, I propose to deal only with that portion of evidence.

35. The writ petition was actually moved on 29.10.2002 for admission. Considering the nature of the prayer without granting any ex parte order, I had directed notice to be given to the counsel for the University. The writ petition was again listed for admission on 1.11.2002 and the counsel appeared on behalf of

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the University and as the interim order extracted above in paragraph 14 would disclose that the learned counsel for the respondent was unable to positively state that the impugned order was preceded by a proper enquiry, I had ordered interim stay and I had orally instructed the counsel for both the parties, especially to the learned counsel for the respondent, to communicate the same to the respondent at the earliest. At the outset, it may be stated that the order communicated by petitioner or the petitioner's counsel had reached the respondent admittedly only in a belated manner and certainly not before the evening of 2.11.2002 when the Syndicate passed the resolution. We have to therefore see when exactly the respondents became aware of the interim order dated 1.11.2002.

36. The stand of the respondents in their counter affidavit as well as in the oral evidence of the three witnesses examined on their behalf is that though the interim order was issued by the Court on 1.11.2002 and a telegram and letter had been sent by their counsel from Madras on 2.11.2002, they were received by the respondent only on 5.11.2002. But in the cross-examination, all the three witnesses had to climb down from this rigid stand, due to some of the facts staring at their own face glaringly to the contrary.

37. It is pertinent to bear in mind that notice in the writ petition had been given to the counsel for the University on 29/30th of October itself. The counsel had also duly intimated the University telephonically on that day itself about the filing of the writ petition and had sought for immediate instructions. This is evident from the letter of the counsel for the respondent dated 30.10.2002 to the Registrar, in which, it is clearly stated that with reference to their telephonic conversation on 29.10.2002, a copy of the affidavit and writ petition (W.P.No.39824 of 2002) were also enclosed and the counsel had sought for instructions for as many as 16 questions and asking for a reply including as to whether the University was willing to postpone the examinations. The letter was sent by fax vide Fax No.0462334363. In the last paragraph, the Registrar had also been asked to furnish the details by return courier and that it would be better if one of the officials well conversant with the particulars could be deputed. It has been further specifically stated "Please give the matter top priority - Contact over the phone".

38. On the same day (30.10.2002), a reply was sent to Mr.M.P.Subbiah, Advocate, by the Registrar, running about three pages, in which, remarks have been furnished to all the sixteen questions. That letter has been received by the counsel on 31.10.2002. Both the said letters are found at Page Nos.CF-19 to CF-24 of the file of the University. The above file clearly brings out that on 29.10.2002 itself, the University was informed about the writ petition and the counsel had specifically asked

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for instructions on 30.10.2002 to be sent with an official acquainted with the case and to keep in touch through telephone. On the same day, a reply is prepared and sent to the counsel, who receives it on 31.10.2002. These facts disclose that both the counsel and University became aware and felt the importance and emergent need to deal with the issue of the conduct of the examination.

39. In the background of the above facts, if the oral evidence of all the three witnesses for the University are to be analysed, especially the stand taken in the respective chief examination of those witnesses and in contrast the outcome in the cross-examination, it reflects very sad state of affairs.

40. The Registrar, who is the individual connected with the above letters from the learned counsel for the University, in his chief examination (R.W.3), would make it appear as though he became aware of the writ petition only at 6.00 p.m. On 2.11.2002 when he received the telegram - Ex.R23 and that he came to know of the said order only on 5.11.2002 when he received the letter of the counsel dated 2.11.2002. He did not contact their lawyer on 2nd, as he was busy on that day with the Syndicate meeting and also on 3rd and 4th, as they were holidays. In the cross-examination, the composure of the witness was totally lost and when he was confronted with Ex.R28, the xerox copy of the letter and a correspondence in the file, he was forced to admit that he had sent a reply on 30.10.2002 itself on which date, he was aware of W.P.No.39824 of 2002 having been filed by the College. He has also admitted that he was informed by the counsel that the writ petition was posted for hearing on 1.11.2002. He has also admitted that he was present in the meeting on 2.11.2002 when the subject relating to the petitioner-College was taken up for discussion. He would also state that he did not tell the members of the Syndicate that the writ petition had come up for hearing on the previous day.

41. I ask myself the question as to whether it is possible to believe the Registrar who was made aware of the writ petition on 29th itself as well as its urgency and on 30th, he himself sends a long reply after being told to keep in touch with the counsel over the phone and knows full well that the case was listed on 1.11.2002, but yet, will not inform the Syndicate on the next day about the writ petition, nor will he keep in touch with the counsel. Therefore, I have to conclude that either he is telling a blanket lie or he is not accustomed to discharge his duties in a proper manner. Why is this anxiety to show falsely that he became aware of the filing of the writ petition itself only on 2.11.2002 after the meeting of the Syndicate while the fact is that he was informed on 29/30th itself and he was aware of the same? The statement of R.W.3 is nothing but a motivated and untrue statement on oath. In the said background, it is highly artificial for the witness to have stated that even though the

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agenda on the same issue was taken up by the Syndicate and discussion also took place on the very issue on which a writ petition has been filed and pending, he has not chosen to inform during the meeting about the writ petition and the instruction he had received from the counsel. The following is the answer of the witness:

> " The Syndicate passed the resolution regarding the change of venue of the examination from the petitioner's college. Change of venue of Examination from the petitioner's College was not on the Ex.R21 Agenda for the Syndicate meeting. Members of the Committee initiated the Resolution on changing the venue of the Examination from the petitioner College. I was present in that meeting. I do not remember as to who first initiated the discussion on the matter. When the matter came up for discussion, I did not appraise the meeting that the W.P.39824 of 2002 had come up for hearing on 1.11.2002. I did not suppress the said fact from the said Syndicate meeting. It is our practice that such matters are taken care of by our Legal Counsel. I did not tell the Members of the Syndicate that the said WP had come for hearing before the Hon'ble High Court on the previous day and that orders were expected in the WP. "

42. The only conclusion will be that either he is lying to protect the Syndicate members or he has his own ulterior motives against the College and would not mind the Syndicate passing orders despite the writ petition and in the process, violate the orders of this Court. If both the alternatives are not correct, the only conclusion could be that he is unfit to hold the important post of Registrar, as he had failed to discharge his functions properly, being the conduit between the University and the counsel for the University.

43. Now, we will come to the evidence of R.W.1, the Controller of Examinations. He would positively state that he became aware of the writ petition (not the stay order) itself only on 5.11.2002. We may straight away refer to Ex.R28, the letter sent by the Registrar on 30.10.2002, in response to the queries by the counsel. The reference column to the said letter mentions that the supporting points by the Controller of Examinations was enclosed. Yet, even after having been shown the exhibits, he would repeatedly swear that he was not aware of the writ petition on 30.10.2002 and that he does not know as to what are the remarks of the Controller of Examinations as mentioned in Ex.R22. It is difficult to reconcile the the evidence of R.W.3 as being that of a true witness. He would go to the extent of stating that he does not know about his own remarks. Does it

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mean that the statement in Ex.R28, as containing the remarks of the Controller of Examinations is false? It is again pertinent to note that in Ex.R22 also, the reply of the counsel dated 2.11.2002 addressed to the Registrar in the reference column, there is a clear reference to the remarks of the Controller of Examinations and a copy of the said letter is also marked to the Controller himself. Yet, the Controller would depose on oath that he had not submitted any remarks on 30.10.2002. The Controller's statement is proved to be false by the evidence of the Vice Chancellor (R.W.2) also. The Vice Chancellor, in his evidence, has stated that on 30.10.2002, he was aware of the writ petition filed by the petitioner as seen from the reference under Ex.R2 and that he did not make any enquiry on 1.11.2002, after receiving the remarks from the Controller of Examinations. Therefore, the receipt of remarks from the Controller of Examinations is confirmed by the Vice Chancellor also. In the said background, I have no other alternative except to discard the evidence of the Controller of Examinations as unworthy of acceptance and nothing but a pack of lies.

44. The evidence of R.W.2, the Vice Chancellor, is also not better than the quality of the evidence of other two witnesses and reflect that in the thinking of all these three important officials of the University, the orders of the Court is of no importance than their own power and discretion to do whatever they like, ignoring the rule of law and that their masters are a handful of persons who could pressurise them to ignore the orders of the Court.

45. The Vice Chancellor also would swear in his chief examination that he came to know of the order only on 5.11.2002 as 3rd and 4th were holidays. If only he had come to know of the order before the meeting of the Syndicate, the Syndicate would not have passed the resolution. In the cross-examination, while admitting that on 30.10.2002 he became aware of the writ petition, however, he would state that he did not make any enquiry on 1.11.2002 after receiving the remarks of the Controller of Examinations. He cannot say whether the Registrar was aware that the writ petition would come up for hearing ion 2.11.2002. The following statement exposes the confusion in the mind of R.W.2.

> " Till date I have not verified as to when the Registrar saw Ex.R-23 telegram. The orders dt. 1.11.02 passed by this Court in W.P.No.39824 of 02 was placed before me on 5.11.02 since 3rd was a Sunday and 4th was Deepavali. I do not remember whether Ex.R-23 telegram was brought to my knowledge on 5.11.02. This is because it is not a court order. On 2.11.02, the Controller of Examinations did not meet me during the Syndicate meeting. I think I met him only on

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5.11.2002. The witness adds that the Controller of Examinations met him immediately after the Syndicate meeting so as to enable the passing of directions to various colleges in view of the urgency of examination. "

46. The anxiety to disclaim knowledge and of having discussed the issue of the writ petition and of the sudden realisation that his statement to the effect that he did not talk to the Controller would be in total conflict with the proved facts, has led to the Vice Chancellor making the above prevaricating and inconsistent statements. The demeanour of the witness was totally lost by further cross-examination. He blurted in an exasperated manner that he was under pressure from the Senate Members to change the venue of the examination. The following extract explicitly brings out that he was completely unnerved and let the cat out of the bag:

" Inspite of knowing that the W.P. Challenging the November, 2002 Examination was posted for hearing on 2.11.02 I approved the draft agenda of item 55 under Ex.R-21 because that particular agenda pertains to the two syndicate sub committee report about various violations committed by the college and is not pertaining to the November, 2002 examination. This item of agenda does not pertain to the change of venue of examinations. The witness adds that a few days prior to the Syndicate meeting the Senate members were greatly agitated and accused me of not taking action against the petitioner college and wanted me to change the venue of the examination to which I refused. No additional agenda was placed for change of venue of examinations. It was discussed then a decision was taken in the Syndicate meeting to change the venue of the examinations. I do not remember whether I had placed materials regarding W.P.No.39824 of 02 and to the posting of the hearing on 1.11.2002 before the Syndicate. Since the Agenda contains everything I did not add anything more and did not bring to the knowledge of the Syndicate about the pendency of the writ petition. I did not bring to the knowledge of the Syndicate about the posting of the aforesaid W.P. on 1.11.2002 because I did not know about the same. I did not mention about the pendency of the said W.P. because on that particular day it was not on my mind and I was fully concerned only with the agenda on hand. "

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47. The manner in which the witnesses went on to depose in a contradictory manner and came out with a sudden statement of having been under the pressure of some other persons to change the venue reveals the actual motive for changing the venue, despite the orders of this Court. The witness states that the agenda did not relate to the examinations being held during November, 2002 and did not pertain to the change of venue. If so, how is it that the impugned resolution came to be passed and the Vice Chancellor did not feel responsible enough to point out about the writ petition pending before the High Court? It is therefore very clear that a few persons were bent upon forcing the University to change the venue and they were not content with the idea of conducting the examination in the petitioner College itself as ordered by the University in its proceedings dated 18.10.2002 (impugned in the writ petition) by imposing certain restrictions on the petitioner College and to conduct the examination in the College itself under the full control of the University through the examiners and invigilators appointed by the University from outside. Even this was not satisfactory to the pressure group, which wanted to see to it that the entire venue was changed. The result of the pressure was to throw the order of the Court to winds.

48. Proof of a charge of criminal complaint or even a civil complaint should, no doubt, be of strict standards and should be established beyond reasonable doubt. But even in a murder case resulting in death penalty or life sentence, proof can be by circumstantial evidence also. The fact of the filing of the writ petition was made known to the authorities on 29/30th itself and the importance of immediate instructions to be sent along with official knowing the facts had been stressed by the counsel for the University and the University was strictly instructed to keep in touch with the counsel. The University also did realise the importance and kept in touch with the counsel by immediately sending a note on that day itself, namely, on 30.10.2002. The University wants the Court to believe that later on suddenly there was a total blackout till 5.11.2002 when the letter from the counsel had been received, informing about the interim order and all of a sudden, they had forgotten the element of importance of the pendency of the writ petition and the specific instruction of the counsel to keep in touch with them. All of a sudden, proceedings of the Syndicate and Deepavali holidays were felt to be more important than the Court proceedings which in fact pertained only to one of the agenda in the Syndicate meeting, and they had no time to contact the counsel over phone though they had been instructed to do so. In between 30.10.2002 and 5.11.2002, the issue had suddenly lost its importance and had become unworthy of any concern. On the same issue, a Syndicate meeting is allowed to go on which is stated to be more important than the anxiety which has to be shown towards the proceedings before the Court and to ascertain the order of the Court from the

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counsel, even though the counsel had given strict instructions to keep in touch through phone. Then comes the Deepavali holiday and the order of the Court and the proceedings before the Court is found to be unworthy of any concern, preventing the responsible officials from contacting the counsel over the phone till 5.11.2002, on which date only, the officials/respondents would condescend themselves to be enlightened about the interim order. It did not occur to any of the three officials holding high position that it was necessary to find out whether the Court has passed any order. This Court would be deceiving itself to believe such a story.

49. This is where I would have felt happy if the counsel on record of the University, as an officer of the Court, had chosen to place all the true facts before the Court instead of asking the petitioner to prove the case beyond reasonable doubt and thereby compel the Court also to protect itself by groping in the dark after receiving a slap in the face. There is nothing wrong in a counsel defending a respondent in a contempt petition like any other proceeding, but there is a limit to which a member of the Bar can close his eyes to blatant acts of contempt of Court and disregard of the orders of Court. He may very genuinely and honestly believe that the actions of the writ petitioner was wholly illegal in other ways and that the steps taken by the University were all warranted and in public interest. I am prepared to assume to that extent even ignoring many answers of the witnesses for the University on the merits of the proceedings which do create an impression that the University was adopting different standards in the context of the alleged commissions and omissions complained against the petitioner college and strangely supporting the cause of unqualified teachers. I will ignore all the defences by the College and assume that the actions of the University against the College were proper. But in a contempt petition, the endeavour of all counsel should be to find out whether there is deliberate disobedience of the orders of the Court and if so, should be exposed. This would be so, even in a case of ex parte interim order. In this case, the interim order was passed in the presence of both sides. The very survival of this institution (judiciary) depends on its orders being implicitly obeyed. If a party thinks that he can disobey the order on his own self-serving opinion and self-appreciation that actions on his side are right and that the opposite view is wrong, then that will be the death-knell to judiciary. There is a growing trend among the men in power that they could disobey the orders of Court and get away scot-free.

50. The counsel had very fairly told the University officials the seriousness of the issue and had also sought for immediate instructions and to keep in touch. Is it possible to believe that it did not occur to either the counsel or the three responsible officials of the University to inform or to ascertain the Court order through phone between 1.11.2002 and 5.11.2002,

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but allow the Syndicate proceedings go on merrily touching the very same issue raised in the writ petition? This is too big a pill to be swallowed. As the Supreme Court had pointed out, in a contempt proceeding, what is at stake is not the dignity of the Court which requires to be protected (much less the prestige of my humble-self in having passed the interim order). The object of a contempt proceeding for disobedience of the orders is to vindicate the right of the public to ensure that the administration of justice shall not be obstructed. That is the only machinery of enforcement available to judiciary which does not have or enjoy its own police powers or executive powers to enforce its own orders. Such enforcement cannot be achieved unless the Bar also feels responsible for the enforcement.

51. I have no interest in contempt proceedings being initiated to protect the dignity of an individual Judge or the judiciary as a whole and whether the impugned comment is fair or unfair. We are now concerned only with contempt for disobedience of the orders of Court.

52. The fact that in this case the respondents had absolutely no intention to obey the order is clear from what had happened subsequently also. Although the respondents make it appear that they came to know of the order only on 5.11.2002, the fact remains that they did nothing to implement the order even thereafter till 8.11.2002 on which date, modified orders were issued. In between the said two dates, the respondents were determined not to implement the order by issuing appropriate directions, even though in his evidence, the Vice Chancellor had vociferously stated that he immediately called the Controller of Examinations and the Registrar and told them to implicitly obey the order. The fact remains that nothing was done to implement the orders of the Court. The attitude not to obey orders of the Court, at any cost, is more than clear from the said circumstance alone for which there is no explanation from any one of the three witnesses, except throwing the blame on each other, the Controller of Examinations and the Registrar stating that they had brought it to the notice of the Vice Chancellor and the Vice Chancellor, in his turn, claiming that he had strictly instructed them to implement the order forthwith.

53. Learned counsel for the petitioner made serious allegations that MUTA was behind the entire episode as they had taken up the cause of the dismissed teachers in a very unprincipled manner and had put pressure on the Syndicate Members, some of whom were Members of MUTA. Neither the Syndicate Members nor MUTA are parties before the Court and hence, it is neither possible nor proper to adjudicate on the said allegations. This Court can only express its fond hope and expectation that MUTA and Syndicate Members would be aware of their solemn responsibilities for protecting the interests of the teaching community in a legitimate manner. If they would take up

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the cause of unqualified teachers who had gained appointment in improper and illegal manner and be dominated by such persons, it would only be a sad reflection of a very bad state of affairs. In fact, they would be acting against the larger interests of the teaching community and preventing the appointment of eligible candidates as Lecturers. They should, in fact, fight against colleges making such appointments and to weed out such appointments, and all the colleges not giving proper scales of pay. But it is unimaginable that MUTA or the Syndicate Members could take up the cause of persons who are alleged to be unqualified. In fact, before me, there was absolutely no denial of the assertion of the petitioner College that the erstwhile Management had made certain improper appointments and that the present Management was only weeding out such unqualified persons and that it is only at the instance of those unqualified Lecturers, the entire agitation was being conducted against the College. I agree that there may be certain other issues of complaints against the college and other reasons also for any frustration among the students of the College resulting in some of the students joining with the dismissed teachers. But I am unable to appreciate that MUTA or the Syndicate Members could be interested in supporting the cause of the unqualified appointees or indisciplined behaviour of the students. On the other hand, they should be interested in seeing to it that the unqualified persons who had gained entry by back-door as against the interest of the qualified persons, should be thrown out and discipline should be maintained in the campus at any cost. Instead, the University is seen trying to raise a contention as a counter-blast that the Principal did not possess the necessary qualification. The stand of the College is that the Principal was fully qualified. But I would assume that the Principal lacked some requisite qualification. The University would be certainly justified in taking strong action against the College and direct the removal of the Principal. But the University, by no stretch of imagination, can try to justify the conduct of persons who are not qualified to be appointed as Lecturers by citing the example of the Principal of the College as a retaliation. This is not expected of an institution like the University. I can only repeat my fond hope that as respectable and responsible bodies involved in the exercise of achieving excellence in education, neither MUTA nor members of the Syndicate would ever indulge in any action which would be contrary to such expectations and also stoop to disobey the orders of the Court and I hope that they are not responsible for what has led to this contempt petition. The authorities are welcome to take strong and stringent actions against erring institutions including the petitioner College. As neither MUTA nor the Syndicate members are parties before me, I do not propose to say anything further. The fact remains that orders of the Court were deliberately disobeyed and disregarded in view of pressure from some of the Members of the Syndicate. There is a clear admission by the Vice Chancellor that he had to face lot of

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pressure to change the venue of examination, which explains the ultimate disregard to the orders of the Court. Though he would simultaneously claim that he did not yield to the pressure, in the witness box, when he made the said statement, he had lost his composure completely and was lamenting on the situation in which he was placed and was practically giving out that he was in helpless position, thereby betraying the fact that he had to obey somebody else than the orders of Court.

54. Therefore, I have no doubt in my mind and hold that the Registrar was very much aware of the orders of the Court passed on 1.11.2002. He and other officials have deliberately violated the orders of Court buckling under pressure from interested groups. I have already made it clear that I will not adjudicate on the correctness or otherwise of the commissions and omissions of the petitioner College and whether the University was justified in the impugned actions in the above writ petition or in the other writ petitions between both the parties. The actions of the officials of the University with reference to the interim order passed by this Court has nothing to do with whatever perception the University may have on their actions against the College. They are public officials and should obey the orders of the Court and cannot allow their ego against the College to exceed the limits to the extent of blatantly disobeying the order of the Court and in the process, depose false facts on oath, full of contradictions and glaring improbabilities. On their own statements accepted as representing the truth, at least one fact would be clear, namely, they knew that contacting the counsel on 1st or 2nd of November, 2002, would result in an impediment to the steps which they were deliberately taking for the change of venue of the examination and therefore, they had decided it was better not to contact the counsel in spite of the fact that the counsel had very strictly informed them of the importance of the issue and to keep in touch with him. This is nothing but dereliction of duty by all the concerned three officials. This dereliction is clearly intentional, in order to bypass the order of the Court. Therefore, I am inclined to find all the three officials, the Controller of Examinations, the Registrar and the Vice-Chancellor, guilty of contempt. As regards punishment, I am inclined to take note of the fact that the Vice Chancellor's term had already expired. Also considering that they had tendered apology and the fact that they were under some pressure from some of the Members of the Syndicate, I am inclined to view the disobedience in a lenient manner and let them off with a warning. At the same time, let these three officials bear in mind that the rule of law is more important than personal likes and dislikes, if they are really worthy of holding of such high positions. The contempt petition is disposed of subject to the above observations.

With the result, the writ petition is dismissed as

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infructuous. Connected W.M.P.No.59257 of 2002 and W.P.M.P.Nos.1418 and 3439 of 2003 are also dismissed and the contempt petition is disposed of subject to the above observations. Sub Application No.392 of 2002 is closed.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ksv
To:
1. The Controller of Examinations
   Manonmaniam Sundaranar University
   Abishekapatty
   Tirunelveli-627 012.

2. The Vice Chancellor
   Manonmaniam Sundaranar University
   Abishekapatty
   Tirunelveli-627 012.

3. The Registrar
   Manonmaniam Sundaranar University
   Abishekapatty
   Tirunelveli-627 012.

1 cc to Mr.N.G.R. Prasad for M/s. Row and Reddy, Advocte, SR. 34573
1 cc to M/s. S. Doraisamy, Advocate, SR. 34868

W.P.No.39824 of 2002 and

Cont.Petn.No.774 of 2002

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